



**BORTOLUSSI & WATKIN, INC.**  
RESTORATION • MITIGATION • EROSION CONTROL

CALIFORNIA CONTRACTOR  
LICENSE # 962905  
CLASSIFICATION C-27 • UNION

December 18, 2018

State of California  
Department of Transportation  
Division of Engineering Services  
Office Engineer, MS 43  
1727 30<sup>th</sup> Street  
Sacramento, CA 95816  
Fax (916) 227-6282

**RE: Construction on State Highway in Contra Costa County in Antioch from .2 Mile West of Hillcrest Avenue overcrossing to Bart Pedestrian overcrossing and from .2 Mile West of Route 4/160 separation to .3 Mile West of Contra Contra Costa Bridge**

**Subject: Bid Protest for Contract 04-2J0424 submitted by JJ Nguyen**

**Bid Opening Date: December 12, 2018**

Dear Engineer:

Bortolussi-Watkin is the second apparent low bidder on the above project, but in fact, based on apparent low bidder JJ Nguyen's letter of December 13, 2018, Bortolussi-Watkin is the actual low bidder and should be awarded the project.

Bortolussi-Watkin protests JJ Nguyen's bid as non-responsive, materially and intentionally imbalanced, and further protests JJ Nguyen's effort by submitting a letter dated December 13, 2018 to "shuffle" its bid items to avoid its non-responsiveness and material error.

Here, bid item #71 is a set number of approximately \$80,053.00 per water meter for 4 water meters, which if bid correctly, is \$ 320,212.00. The other bidders bid this correctly, and without imbalance.

In the case of JJ Nguyen, Inc. its bids listed a unit price of \$ 12,250.00 for that bid item, resulting in a total bid line item of \$ 50,000.00. This is a material error of \$ 270,000.00 in amount. JJ Nguyen's overall bid is \$60,000 lower than Bortolussi Watkins' overall bid of \$ 1,676,106.15. By correcting the material bid error, JJ Nguyen's bid is no longer low, but in 3<sup>rd</sup> position, at \$ 1,886,414.50, after Bortolussi's now low bid of \$ 1,676,106.15 and Wabo 2<sup>nd</sup> place bid of \$ 1,676,767.00.

There is no question that JJ Nguyen made this bid error deliberately to imbalance its bid, and if sufficiently low, claim a clerical error and keep the bid. See for example, JJ Nguyen's own bid protest of exactly what it is trying to do here, on Caltrans' project CT 04-2J0414, of low bidder Empire's similar tactic of misbalancing the bid. JJ Nguyen's prior position shows its mental state here, both in providing

a non-responsive, imbalanced bid, and then under the ruse of "clerical error", an attempt to get the contract award even where by correcting the error, it is no longer low. Please See JJ Nguyen letter to Caltrans attached, April 24, 2018 regarding the April 19, 2018 bid opening on that project.

This was not clerical but material and the letter by JJ Nguyen dated December 13, 2018 does not state how the error occurred. It is a deceptive letter and renders the bidder non-responsive as well as the bid, non-responsive. The bid form makes it impossible to make this error, unless intending to imbalance and hope for this very rebid or reprice opportunity, to get the award but increase the price by claimed clerical error.

Further, it is also out of order, and an impermissible re-bid to only one bidder, to allow JJ Nguyen to switch out two bid items, #65 and 71, in hopes of avoiding the bid imbalance and it's not actually being low, once the bid error on item #71 is corrected.

For these reasons, the JJ Nguyen bid must be rejected. It not the low bid, in fact. It is not low once the admitted bid error is corrected. The best JJ Nguyen can do is attempt to withdraw its bid. It cannot reshuffle its bid numbers to keep the work and stay low when it is not low when one of the line items is corrected. Its conclusionary letter fails to show how both numbers were subject to clerical error and is suspicious given Nguyen's own past practice of challenging this very ploy.

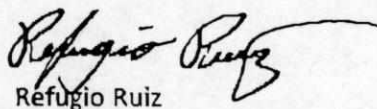
The claim of inadvertence is not credible given the recent protest by JJ Nguyen of Empire's bid on CT 042J04\4 as imbalanced on the same ploy.

Based on the above facts and protest, Bortolussi Watkin is the low bidder, and lowest responsive and responsible bidder, and should be awarded the contract.

Thank You for taking your time in this matter.

If you have any questions or concerns, please don't hesitate to call.

Thank You,



Refugio Ruiz

Secretary/Treasury

# JJ Nguyen, Inc. | General Landscape Contractors

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April 24, 2018

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2018 APR 27 AM 11:47

RE: BID PROTEST  
CT#: 04-2J0414 (4/19/2018)

Dear John C. McMillan,

This letter serves as JJ Nguyen, Inc.'s ("JJN") bid protest with regard to the above referenced contract and bid.

JJN protests the bids submitted by Empire Landscape, Inc. ("Empire") as unbalanced. The failure of Empire in providing a balanced bid should require that the California State of Transportation ("Caltrans") reject their bid, therefore awarding the contract to the next lowest responsive bidder.

A summary of these deficiencies are shown in the below tables as confirmation.

## Breakdown of unbalanced bid items below for Empire Landscaping, Inc. :

Item # 79 (Water Meter Charges) – Empire's bid of \$10,000 for Water Meter Charges is clearly unbalanced or has a considerable mistake in their bid of the Water Meter Charges in comparison to the other three reasonable bids provided by JJN, Bortulussi & Watkins, Wabo respectively. Empire's bid does not even meet the minimum requirement for the Water Meter Charges as listed on Page 10 of the Special Provisions, which is approximately \$152,190. Empire's bid of \$10,000 has undoubtedly been grossly miscalculated.

Company	Item #	Qty	Unit	Unit Cost	Item Total
Empire	79		LS	10,000	10,000
JJN	79		LS	170,000	170,000
B&W	79		LS	152,190	152,190
Wabo	79		LS	152,200	152,200
Marina	79		LS	704,000	704,000

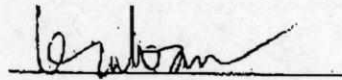


Item # 80 (Irrigation Water Service Charges) - Empire bid is again substantially lower than the other bids presented below for the Monthly Water Service Charges. Their bid of \$10,000 appears to have been clearly miscalculated, again not meeting the minimum requirement amount of approximately \$23,922 for 36 months. Other bids shown below are in line with bid item requirements as stated on Page 10 of the Special Provisions.

Company	Item #	Qty	Unit	Unit Cost	Item Total
<b>Empire</b>	<b>80</b>		<b>LS</b>	<b>10,000</b>	<b>10,000</b>
JJN	80		LS	48,000	48,000
B&W	80		LS	45,000	45,000
Wabo	80		LS	50,000	50,000
Marina	80		LS	75,000	75,000

Subsequently, the above bid summaries definitively show Empire's bid submittals are considerably less than that of the other bidders and are clearly unbalanced and/or have major errors. JJN respectfully request that Caltrans reject the bid of Empire as being materially unbalanced, and award the contract to the next lowest responsive bidder.

Sincerely,



Vivian Tran | JJ Nguyen, Inc.